

# Memorandum

**TO:** HONORABLE MAYOR AND CITY COUNCIL **FROM:** Paul Krutko

**SUBJECT:** SEE BELOW

**DATE:** January 12, 2009

Approved

Date

**COUNCIL DISTRICT:** Citywide

**SUBJECT: ADOPTION OF RESOLUTIONS RELATED TO THE FORMATION OF A CONVENTION CENTER FACILITIES DISTRICT**

## RECOMMENDATION

Adoption of the following resolutions in connection with the formation of a Convention Center Facilities District:

- a. A Resolution of Intention to form a Convention Center Facilities District, to authorize the levy of special taxes pursuant to the City of San Jose Convention Center Facilities District financing procedure, to set a public hearing on Tuesday, March 10, 2009, at 1:30 p.m. regarding formation of the District and authorizing other related actions.
- b. A Resolution to Incur Bonded Indebtedness of the proposed Convention Center Facilities District pursuant to the City of San Jose Convention Center Facilities District financing procedure in an amount not to exceed \$750,000,000.

## OUTCOME

Approval of these recommendations will allow the City to proceed with a public hearing regarding formation of a Convention Center Facilities District (the "District") and issuance of bonds in connection with that District, and, to the extent a District is formed and bonds are issued, to reimburse any preliminary project expenditures from bond proceeds.

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## **BACKGROUND**

City and Agency staffs have been working with the Convention and Visitors Bureau ("CVB") and the hotel groups to develop a funding program for the renovation and expansion of the Convention Center. Funding for the proposed Convention Center expansion is expected to come from Redevelopment Agency funds (assuming that the Agency can amend the redevelopment plans to increase its financial cap) and through the formation of a Convention Center Facilities District. Hotel properties within the district would be given the opportunity to approve a tax that the City would impose on hotel properties based on occupied hotel rooms. The tax rate would be a percentage of the hotel room rate, and would be administered in the same manner as the City's current Transient Occupancy Tax ("TOT").

On August 19, 2008, the City Council approved an ordinance amending Title 14 of the San José Municipal Code to add a new Chapter 14.32 to establish a procedure for the financing of certain public capital facilities through the establishment of Convention Center Facilities Districts, the levy of special taxes and the issuance of bonds secured by such special taxes.

On September 30, 2008, the City Council adopted a resolution of intention to form a Convention Center Facilities District, approved the boundary map, and set a date for a public hearing on November 18, 2008. The public hearing subsequently was deferred to January 13, 2009.

On January 13, 2009, the City Council was presented with an update on the status of construction for the expansion and renovation of the Convention Center, a summary of the currently proposed plan of finance, changes to the CCFD special tax, an assessment of the impact on Fund 536 during the construction period, and a cost benefit analysis for the proposed project.

The structure of the special tax included in the proposed plan of finance differs in certain respects from that included in the Rate and Method of Apportionment included in the Resolution of Intention adopted on September 30, 2008. The actions approved on January 13, 2009 include repeal of the prior Resolution of Intention. The Resolution of Intention recommended for adoption in this memorandum reflects the proposed plan of finance as described at the January 13, 2009 meeting.

## **ANALYSIS**

Due to the proposed modifications in the structure of the special tax, Council will need to adopt a new resolution of intention to form the District (the "Resolution of Intention"), and a new resolution declaring the need to incur bonded indebtedness. Each of these resolutions is discussed in more detail below.

**Resolution of Intention to Form the District**

The Resolution of Intent will accomplish the following: establish the name of the District; preliminarily approve the boundaries; identify the public facilities to be financed; propose the rate and method of apportionment of special taxes to pay for the public facilities including paying principal and interest on the bonds and the City's administrative expenses; describe the voting procedure for the approval of the special tax by the qualified electors; cause a report on the public facilities to be financed through the District to be filed with the City Clerk prior to the public hearing on formation of the District; and set a public hearing on March 10, 2009, at 1:30 p.m. regarding the formation of the District. The Clerk will cause notice of the March 10, 2009, public hearing to be published in a newspaper in accordance with the Act.

The boundaries of the proposed Convention Center Facilities District are shown in Exhibit A to the Resolution of Intent, and are on file with the City Clerk. The boundary map was recorded in the office of the Santa Clara County Recorder on November 4, 2008.

As described in the memorandum for the January 13, 2009 discussion, the District will finance up to \$150 million of proposed renovation and expansion improvements to the City's McEnery Convention Center. The financing would be through bond issuance, and the estimate is based on projected future hotel tax revenues, which are economically sensitive. A downturn in hotel revenues over the next year could reduce the near-term bonding capacity of the District. These bonds would be solely payable from proceeds of the special tax and no other City funds would be obligated to make debt service payments. The improvements to be financed by the District represent approximately half of the renovation and expansion improvements to be constructed by the Redevelopment Agency, which are estimated to total approximately \$300 million.

The Redevelopment Agency will provide funding for the remaining portion of the improvements. In addition to funding the renovation and expansion improvements, the special tax will be used to pay costs of administering the District and to pay for ongoing capital repair and replacement costs. A list of authorized facilities and services is included as Exhibit B to the Resolution of Intent, and a representative listing of incidental expenses and bond issuance costs is included as Exhibit C to the Resolution of Intent. Although the City Council has sole discretion over use of the special tax revenues, staff plans to bring forward at the public hearing on March 10, 2009 a recommendation to establish an advisory body, which will include hotel representatives as part of the resolution of formation.

The City's special tax consultant has modified the rate and method of apportionment of special taxes to incorporate changes in the structure of the special tax that staff believes are necessary to support the financing of these improvements and to pay the annual administrative costs of the City. These modifications include immediate implementation of

the full 4% special tax for hotels located within 2.5 miles of the Convention Center and an additional special tax of 1% to be implemented under certain conditions described below.

Each hotel property within the District shall be subject to a monthly maximum special tax charged by the operator of such hotel property for the applicable month. The special tax will initially be collected in two zones. Commencing in Fiscal Year 2009-10, Zone 1 will be subject to a special tax equal to 4% of the rent charged. Zone 2 would be subject to a special tax that would be phased in over a three-year period increasing from 1% in Fiscal Year 2009-10 to 4% by Fiscal Year 2011-12. Each zone would be subject to an additional special tax rate of 1% of rent that would be levied if the balance in the Revenue Stabilization Fund were to fall below a minimum threshold to be specified in the bond documents.

The special tax will be collected monthly through the same mechanism by which the City currently collects its Transient Occupancy Tax from hotel properties. The rate and method of apportionment is included as Exhibit D to the Resolution of Intent.

Pursuant to the Act, special taxes must be approved by a two-thirds majority of the votes cast by the qualified electors. In the case of a Convention Center Facilities District, since the special tax is not ever levied on residential property, but is a tax on property owners for the use of the property as a hotel, the electors would be the owners of property on which a hotel is situated. Moreover, under Section 14.32.430 of the San Jose Municipal Code, the votes are weighted based on the number of hotel rooms on each hotel property. Because the special tax is limited to hotel properties, the vote will be conducted by holding a special election by mailed or hand-delivered ballots.

#### **Resolution Declaring the Need to Incur Bonded Indebtedness**

The original resolution declaring the need to incur bonded indebtedness was repealed on January 13, 2009 because it specified a public hearing schedule that is no longer applicable. Therefore, staff recommends that the Council adopt a new resolution declaring the need to incur bonded indebtedness for the District. The maximum amount of indebtedness set forth in that resolution is \$750 million, and the maximum term of the bonds is limited to forty years. Because the maximum amount of indebtedness applies to any bonds to be issued at any time in the future, it should be set sufficiently high to accommodate not only the amount of bonds to be issued for the currently proposed renovation and expansion, but also bonds which the City might want to issue for future capital improvements to the Convention Center. As a practical matter, the maximum amount of bonds that could be issued secured solely by the special tax would be limited by the actual level of special tax revenues.

### **EVALUATION AND FOLLOW-UP**

Subsequent to the public hearing to be held on March 10, 2009, property-owners will vote on District formation, but no earlier than 90 days after the public hearing. If the District is formed, the City will bring a validation action to have a court confirm the City's legal authority to impose a special tax and issue bonds under the Act.

### **PUBLIC OUTREACH/INTEREST**

If approved by Council, a public hearing regarding the formation of the District will be held on March 10, 2009. The Clerk will cause notice of the March 10, 2009 public hearing to be published in a newspaper in accordance with the Act.

- ☐ **Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- ☐ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

### **COORDINATION**

This staff report has been prepared by the City Manager's Office in coordination with the City Attorney's Office, the Redevelopment Agency, and the Finance Department.

### **COST SUMMARY/IMPLICATIONS**

A portion of the compensation for the financial advisor and bond counsel is contingent on the successful sale and close of the bonds and will be paid from bond proceeds. Non-contingent financial advisor, bond counsel, and special tax consultant costs and related City staff costs will be covered by funds provided by the Redevelopment Agency.

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**CEQA**

Resolution No. 72767. On June 21, 2005, the City Council made findings with Resolution No. 72767 in connection with the adoption of the Downtown Strategy 2000. The Program EIR for the Downtown Strategy 2000 addressed the Convention Center expansion project at a programmatic, or highly conceptual, level. Subsequent environmental review will be completed based on the more detailed project description that will be an outcome of the City Council/Agency Board's design direction. The City Council/Agency Board's ultimate action to authorize the Convention Center expansion would be informed by this subsequent environmental review.

A handwritten signature in black ink, appearing to read "Paul Krutko", with a stylized flourish at the end.

PAUL KRUTKO

Chief Development Officer

For questions, please contact Paul Krutko, Chief Development Officer, at (408) 535-8181.

**Attachments:**

- A Resolution of Intent
- B Rate and Method of Apportionment
- C Bonding Declaration

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE  
DECLARING INTENTION TO ESTABLISH CONVENTION CENTER  
FACILITIES DISTRICT NO. 2008-1 AND TO LEVY A SPECIAL TAX  
THEREIN TO FINANCE SPECIFIED ACQUISITION, CONSTRUCTION,  
RECONSTRUCTION, REPLACEMENT, REHABILITATION AND  
UPGRADE OF THE SAN JOSE CONVENTION CENTER.

WHEREAS, the City of San José (the "City") is a municipal corporation and charter city duly organized and existing under a charter pursuant to which the City has the right and power to make and enforce all laws and regulations in respect to municipal affairs and certain other matters in accordance with and as more particularly provided in Sections 3, 5 and 7 of Article XI of the Constitution of the State of California and the Charter of the City; and

WHEREAS, Chapter 14.32 (the "Chapter") of the San José Municipal Code provides that the City is authorized to form a convention center facilities district to finance the acquisition, construction, reconstruction, replacement, rehabilitation and upgrade of the San José Convention Center under the provisions of the Mello-Roos Community Facilities Act of 1982 (Sections 53311 and following of the California Government Code) as they existed at the time of the adoption of the Chapter (the "Act") and as modified by the Chapter; and

WHEREAS, the City Council of the City (the "City Council") has therefore duly considered the advisability and necessity of establishing a convention center facilities district within its jurisdictional boundaries and levying a special tax therein, to finance the acquisition, construction, reconstruction, replacement, rehabilitation and upgrade of the San José Convention Center under and pursuant to the Chapter; and

WHEREAS, on September 30, 2008, the City Council adopted Resolution 74604, which among other things, approved a Boundary Map (as defined in Paragraph 3, below) for the Convention Center Facilities District (as defined in Paragraph 2, below); and

WHEREAS, pursuant to Resolution 74604, the Boundary Map was recorded on November 4, 2008 in the Book of Maps of Assessment and Community Facilities Districts maintained by the County Recorder of the County of Santa Clara in Book 44 at Pages 32-46, as Instrument Number 20037072; and

WHEREAS, on January 13, 2008, the City Council determined to reconsider the special tax proposed in Resolution 74604 and therefore adopted Resolution No. \_\_\_\_\_, repealing Resolution 74604, but ratifying and re-approving the Boundary Map, and the recordation of the Boundary Map; and

WHEREAS, the City Council is fully advised in this matter;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE  
CITY OF SAN JOSE THAT:

1. The City hereby specifically finds and declares that the actions authorized hereby constitute and are with respect to public affairs of the City and that the statements, findings and determinations of the City set forth above are true and correct and that the consideration of the formation of the Convention Center Facilities District is important to the public welfare of the residents of the City, and may result in significant public benefits.

2. It is the intention of the City Council, and the City Council hereby proposes, to establish a Convention Center Facilities District under and pursuant to the Chapter, to be known and designated as "Convention Center Facilities District No. 2008-1, City of San José, County of Santa Clara, State of California" (the "Convention Center Facilities District").

3. The boundaries of the territory proposed for inclusion in the Convention Center Facilities District are particularly described and shown on the map entitled "Proposed Boundaries of Convention Center Facilities District No. 2008-1, City of San José, County of Santa Clara, State of California" (the "Boundary Map") copies of which are now on file in the office of the City Clerk and also recorded in the Office of the Santa Clara County Recorder, as set forth above. A reduced copy of the map is marked Exhibit A and is attached hereto and, by this reference, is incorporated herein and made a part of this resolution.

4. The City Council hereby identifies all property that may be developed for hotel purposes (as defined in the City's Municipal Code) anywhere within the City or within the City's sphere of influence, as determined by the Local Agency Formation Commission (LAFCO) of the County of Santa Clara, and which becomes annexed to the City, as "territory proposed for annexation in the future" as that phrase is used in Section 53339.3(b) of the Act.

5. It is the intention of the City Council to finance the acquisition, expansion, construction, reconstruction, rehabilitation, replacement or upgrade, pursuant to the Chapter, of the public facilities shown on Exhibit B attached hereto (the "Facilities"), which by this reference is incorporated herein and made a part of this resolution. All of the Facilities have an estimated useful life of five years or longer. They are public facilities that the City is authorized by law to construct, own, or operate, or to which it may contribute revenue.

6. The cost of financing the Facilities includes incidental expenses for the Facilities comprising the costs of planning and designing the Facilities, together with the costs of environmental evaluations thereof, and all costs associated with the creation of the Convention Center Facilities District, the issuance of bonds, the determination of the amount of any special taxes, or the collection or payment of any special taxes and costs otherwise incurred to carry out the authorized purposes of the Convention Center Facilities District, together with any other expenses incidental to the acquisition and construction of the Facilities. A representative list of incidental expenses proposed to be incurred is set forth on Exhibit C attached hereto, which by this reference is incorporated herein and made a part of this resolution.

7. It is the intention of the City Council that, except where funds are otherwise available, a special tax be levied on the real property within the Convention Center Facilities District sufficient to finance the following: the acquisition, expansion, construction, reconstruction, rehabilitation, replacement or upgrade, of the Facilities, including but not limited to the payment of interest on and principal (and premium on early redemption, if any) of bonds,



to be issued to finance the acquisition and construction of the Facilities; the making of lease payments for Facilities (whether or not in conjunction with the issuance of certificates of participation); the repayment of funds advanced by the City, or by the Redevelopment Agency of the City of San José, for the Convention Center Facilities District or for the Facilities, the repayment under any agreement (which will not constitute a debt or liability of the City) of advances of funds or reimbursement for the lesser of the value or cost of work in-kind provided by any person for the Convention Center Facilities District; all so far as permitted by the rate and method of apportionment of the special tax as described below.

8. Upon recordation of a Notice of Special Tax Lien pursuant to section 3114.5 of the California Streets and Highways Code, a continuing lien to secure each levy of the special tax shall attach to all nonexempt real property in the Convention Center Facilities District, and this lien shall continue in force and effect until four years after the levy of the special tax by the City ceases, should that ever occur.

9. It is the intention of the City Council that the proposed special tax will be collected monthly through the same mechanism by which the City currently collects its Transient Occupancy Tax from hotel properties; however, the City Council reserves the right to utilize any other lawful means of billing, collecting, and enforcing the special tax, including billing on the secured property tax roll, direct and supplemental billing, and, when lawfully available, judicial foreclosure of the special tax lien.

10. The rate and method of apportionment of the special tax, including the maximum special tax, is set forth on Exhibit D attached hereto, which by this reference is incorporated herein and made a part of this resolution. Exhibit D provides sufficient detail to allow each landowner and operator of a hotel on property within the Convention Center Facilities District to estimate the maximum amount of special tax for which such property will be obligated.

11. Except where otherwise specified, it is the intention of the City Council, pursuant to section 53340.1 of the Act, to levy the special tax on the leasehold or possessory interests in property owned by a public agency (which property is otherwise exempt from the special tax), to be payable by the owner of the leasehold or possessory interest in such property.

12. It is the intention of the City Council, pursuant to section 53325.7 of the California Government Code, to establish the appropriations limit, as defined by subdivision (h) of section 8 of article XIIIB of the California Constitution, for the 2009-2010 fiscal year, for the Convention Center Facilities District in the amount of \$500,000,000.

13. Notice is hereby given that Tuesday, March 10, 2009, at 1:30 p.m., or as soon thereafter as the City Council may reach the matter, in the City Council Chambers at San José City Hall, 200 East Santa Clara Street, City Council Wing, 2nd Floor, San José, California, 95113, has been fixed by the City Council as the time and place for a public hearing to be held by the City Council to consider the establishment of the Convention Center Facilities District, the proposed rate, method of apportionment, and manner of collection of the special tax, and all other matters as set forth in this resolution. At the public hearing, any persons interested, including all taxpayers, property owners, and registered voters within the Convention Center

Facilities District, may appear and be heard, and the testimony of all interested persons or taxpayers for or against the establishment of the Convention Center Facilities District and the levy of the special tax, the extent of the Convention Center Facilities District, the acquisition or construction of any of the Facilities, the establishment of the appropriations limit, or on any other matters set forth herein, will be heard and considered.

14. Any protests to the proposals in this resolution may be made orally or in writing by any interested persons or taxpayers, except that any protests pertaining to the regularity or sufficiency of these proceedings must be in writing and must clearly set forth the irregularities and defects to which objection is made. The City Council may waive any irregularities in the form or content of any written protest and at the public hearing may correct minor defects in the proceedings. All written protests not presented in person by the protester at the public hearing must be filed with the City Clerk at or before the time fixed for the public hearing in order to be received and considered. Any written protest may be withdrawn in writing at any time before the conclusion of the public hearing.

15. Written protests by a majority of the registered voters residing and registered within the Convention Center Facilities District (if at least six such voters so protest), or by the owners of a majority of the hotel rooms (see Section 14.32.420 of the Chapter) within the Convention Center Facilities District not exempt from the proposed special tax, will require suspension of these proceedings for at least one year. If such protests are directed only against certain elements of the proposed Facilities or the special tax of the Convention Center Facilities District or the other proposals contained in this resolution, only those elements need be excluded from the proceedings.

16. The public hearing may be continued from time to time, but shall be completed within 30 days, except that if the City Council finds that the complexity of the Convention Center Facilities District or the need for public participation requires additional time, the public hearing may be continued from time to time for a period not to exceed 6 months.

17. At the public hearing, the City Council may modify the proposal contained in this resolution by eliminating any of the Facilities, or by changing the method of apportionment of the special tax so as to reduce the maximum special tax for all or a portion of the Owners of Property (as defined in Section 14.32.101 of the Chapter) within the Convention Center Facilities District, or by removing any territory from the Convention Center Facilities District, except that if the City Council proposes to modify the proposal contained in this resolution in a way that will increase the probable (as distinct from the maximum, which may not be increased) special tax to be paid by the owner of any lot or parcel of land in the Convention Center Facilities District, the City Council shall direct that a report be prepared that includes a brief analysis of the impact of the proposed modifications on the probable special tax to be paid by the Owners of such lots or parcels of land in the Convention Center Facilities District, and the City Council shall receive and consider the report before approving any such modifications or any resolution forming the Convention Center Facilities District that includes such modifications.

18. At the conclusion of the public hearing, the City Council may abandon these proceedings or may, after passing upon all protests, determine to proceed with establishing

the Convention Center Facilities District. If, at the conclusion of the public hearing, the City Council determines to proceed with the establishment of the Convention Center Facilities District, it expects that the proposed voting procedure will be by Owners of Property voting in accordance with Section 53326(c) of the Act, as modified by Section 14.32.430 of the Chapter whereby each Hotel Property is entitled to one vote for each hotel room located on such property.

19. The City Manager is hereby directed to study the Convention Center Facilities District and, at or before the time of the public hearing, to cause to be prepared and filed with the City Council a report containing a brief description of the Facilities by type that in her opinion will be required to adequately meet the needs of the Convention Center, together with estimates of the cost of financing the acquisition and construction of the Facilities, and an estimate of the incidental expenses related thereto.

20. The City Clerk shall give notice of the time and place of the public hearing in the following manner:

(a) A Notice of Public Hearing in the form required by the Act is to be published once in the *SAN JOSE MERCURY NEWS*, a newspaper of general circulation published in the area of the Convention Center Facilities District, pursuant to section 6061 of the California Government Code, and publication must be completed at least seven days prior to the date set for such public hearing.

(b) A Notice of Public Hearing in the form required by the Act is to be mailed, first-class postage prepaid, to each owner of land within the Convention Center Facilities District except in cases where the land is owned by a public agency in which case the mailing shall be to the lessee of the public agency at their addresses as shown on the last equalized assessment roll or as otherwise known to the City Clerk.

21. In the opinion of the City Council, the public interest will not be served by allowing the property owners in the Convention Center Facilities District to intervene in the public bidding process pursuant to Section 53329.5(a) of the Act.

22. This Resolution shall take effect upon its adoption.

ADOPTED this 3rd day of February, 2009, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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CHUCK REED, Mayor

ATTEST:

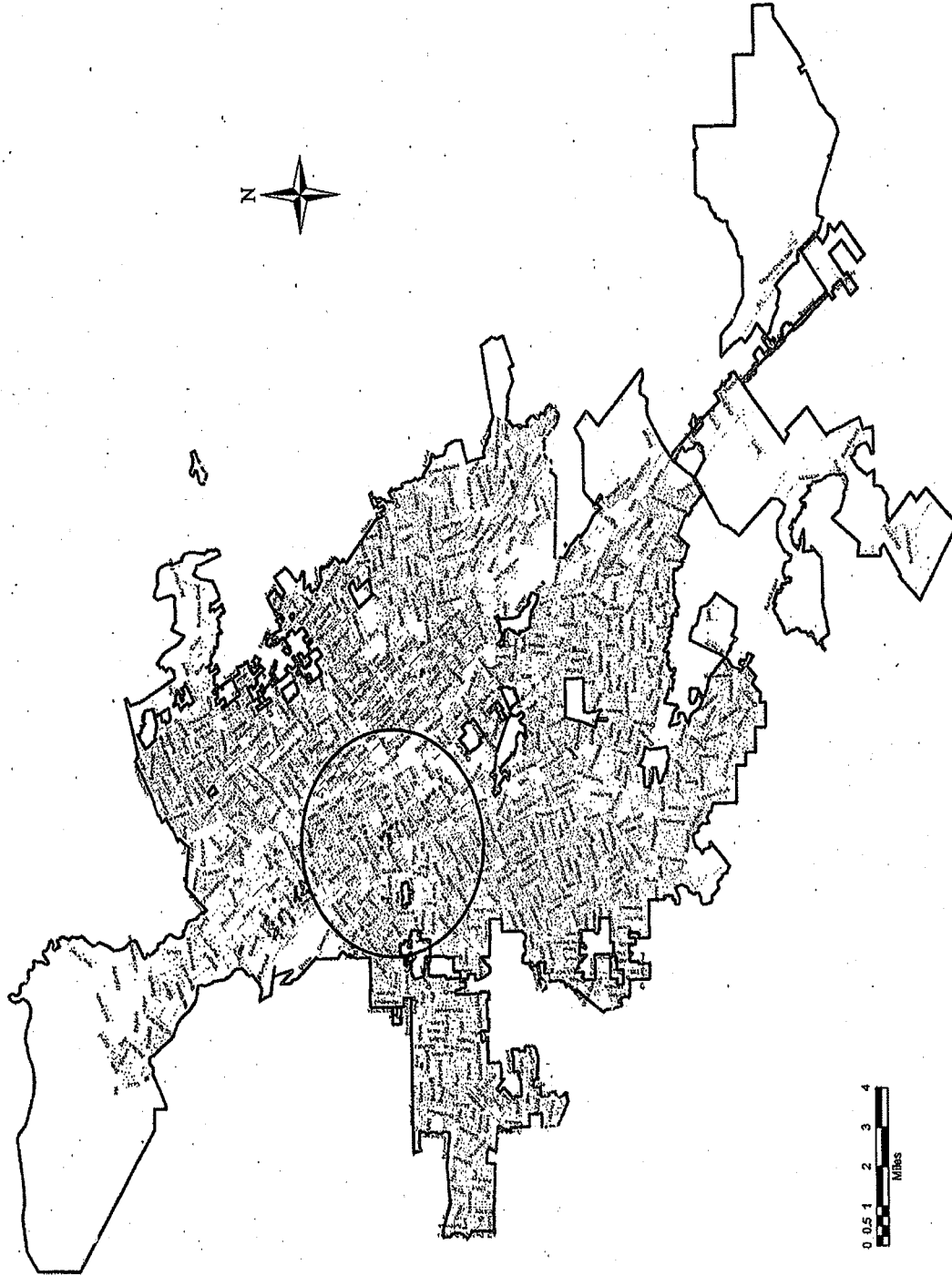
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LEE PRICE, City Clerk

**EXHIBIT A**

**PROPOSED BOUNDARIES OF  
CONVENTION CENTER FACILITIES DISTRICT NO. 2008-1  
CITY OF SAN JOSE  
COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.**

ZONE MAP OF CITY OF SAN JOSE  
CONVENTION CENTER FACILITIES DISTRICT NO. 2008-1



- LEGEND
- City Boundary
  - Convention Center
  - Zone 1
  - Zone 2
  - 2.25 Mile Radius

## **EXHIBIT B**

**CONVENTION CENTER FACILITIES DISTRICT NO. 2008-1,  
CITY OF SAN JOSE  
COUNTY OF SANTA CLARA, STATE OF CALIFORNIA  
AUTHORIZED CONVENTION CENTER FACILITIES**

The Convention Center Facilities District special tax may finance any acquisition, construction, reconstruction, replacement, rehabilitation or upgrade, with an expected useful life of 5 years or longer, of any Convention Center Facility as defined in Section 14.32.220 of the Chapter. Pursuant to Section 14.32.300 of the Chapter, the Convention Center Facilities District special tax may be spent on the following: debt service; lease payments; costs of issuance of securities issued for the purpose of financing or refinancing Convention Center Facilities; administrative costs of the District; prepayment of such securities; direct costs of acquisition, design and construction of Convention Center Facilities; and ongoing capital repair and capital replacement of Convention Center Facilities.

Whether any such facility will be financed is within the sole discretion of the City Council. It is the intention of the City Council to develop the Phase I Project outlined below. However, project components may be delayed if the capital markets limit the ability to issue bonds, the Redevelopment Agency's ability to partially fund the project changes, or other *force majeure* circumstances beyond the control of the City occur, including: acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster); terrorist activities; labor disputes, strikes and lockouts; shortage of supplies, equipment, or materials; or any other reason where failure to perform is beyond the reasonable control of the City and the City has exercised all reasonable efforts to avoid or remedy such *force majeure*. If the Phase I Project cannot be completed in its entirety, the City will seek a recommendation from an advisory committee to the City Manager (the "Capital Facilities Advisory Committee") to assist in redefining the Phase I Project within the limits of Section 14.32.220 of the Chapter. The Capital Facilities Advisory Committee, established under the Agreement for the Management of the San Jose Convention Center and Cultural Facilities between the City of San José and Team San Jose, Inc., shall consist of four members from the hotel industry to be selected by Team San José, Inc., a

California nonprofit mutual benefit corporation (the "Operator"), and four members from the City or Redevelopment Agency selected by City.

Ongoing capital repair and capital replacements shall be funded from special tax collections in excess of administrative fees, debt service or lease payments, and related financing costs (e.g. reimbursement payments to the City or the Redevelopment Agency). A long-range capital replacement plan shall be prepared and updated by the convention center Operator annually.

The Convention Center Facilities District special tax in excess of the capital repair and replacement expenditures needed for the San José Convention Center to achieve a quality level consistent with its competitors may finance future acquisition, construction, reconstruction, replacement, rehabilitation or upgrade, with an expected useful life of 5 years or longer, of any Convention Center Facility as defined in Section 14.32.220 of the Chapter.

Whether any additional Convention Center Facilities will be financed is within the sole discretion of the City Council. However, the City Council will, before ordering the financing of any additional Convention Center Facilities, consult with the Capital Facilities Advisory Committee to consider its views on whether any of the Convention Center Facilities should be financed.

### **Phase I Project**

The Phase I Project will include the following components:

1. Existing Convention Center Renovation
  - a Fire Alarm and Protection - Replace the fire alarm and protection system consistent with current codes.
  - b Central Plant - Replace the heating, ventilation, and air conditioning system including related pumps, chillers, exhaust fans, boilers, heat exchangers, cooling towers, and related electrical systems.
  - c Building Management System - Replace the building management system with a direct digital control system that controls building systems.
  - d Roof and Terraces - Replace flat roofs with single-ply overlay at build-up roofing, gutter system at aluminum barrel roof; and IPB glass block grid system. Waterproof terraces.



- e Exhibit Halls - Replace ACT ceiling panels and paint grid; replace/refurbish operable walls and tracks; reconfigure and replace acoustic wall panels; install new way finding; paint walls; reconfigure and replace lights; drop existing pick points below the ceiling; add additional pick points; repair and paint restrooms; replace and/or repair doors and door hardware.
- f Ballroom -Replace carpet tiles; repair and paint metal ceiling; replace operable walls and tracks; install new way finding; reconfigure and replace acoustic wall panels; paint walls; replace down lights; repair and paint restrooms; replace and/or repair doors and door hardware.
- g Exhibit Level Concourse - Replace carpet tiles; paint walls; install wall graphics; installing new way finding; refurbish metal slat ceiling; repair and paint metal ceiling; replace ACT ceiling panels and paint grid; reconfigure lighting; repair and paint restrooms; replace and/or repair doors and door hardware.
- h Meeting Rooms and Corridors - Replace carpet tiles; replace ACT ceiling panels and paint grid; replace/refurbish operable walls and tracks; install new way finding; reconfigure and replace acoustic wall panels; paint walls; repair and paint restrooms; replace and/or repair doors and door hardware.
- i Arcade - Paint walls; install wall graphics; install new way finding; refurbish metal slat ceiling; replace ACT ceiling panels and paint grid; reconfigure lighting; repair, and paint restrooms; replace and/or repair doors and door hardware.
- j Elevators and Escalators -Refurbish elevator cabs on public elevators, refurbish controllers, power units, fixtures, and selectors; and refurbish escalator rollers, steps, comb-plate, and handrails.
- k Surveillance System - Replace existing cameras, door monitoring, front-end equipment, control panels and recording systems.
- l Kitchen - Renovate the existing kitchen to accommodate the needs of the existing and expanded convention center including reconfiguration of

kitchen area and replacement of equipment. Kitchen may be an additive alternate in the Phase 1 project.

2. Convention Center Expansion

The convention center expansion will be developed to current, competitive, "Class A" standards and include all the function and support spaces required for effective operations. Key components of the expansion will include:

- a Exterior Facade: The exterior of the building will consist of a glass curtain wall and metal panel system. A 3,300 ± square foot programmable LED media messaging display wall may be included as an additive alternate in the Phase 1 project.
- b Lobby – A new lobby will be constructed that connects the existing convention center to the expanded facility.
- c Ballroom – A 35,000 square foot, column-free ballroom with 30-foot clear ceilings, and operable wall divisibility. In addition, the ballroom will be expandable to 43,000 square feet.
- d Junior Ballroom - A 20,000 square foot, column-free junior ballroom with 25-foot clear ceilings, and operable wall divisibility. In addition, the junior ballroom will have operable walls enabling expansion to 37,000 square feet.
- e Service – A plating kitchen, pre-function and back of house areas and systems to service the expansion space.
- f Wayfinding and Signage - A new wayfinding system will work throughout the renovated and expanded facility.
- g The expansion will be a LEED-Silver rated building in accordance with City policy.
- h Furniture, Fixtures and Equipment (F.F.&E.)- The F.F.&E. to operate the convention center with an expected useful life of 5 years or longer. Some F.F.&E. may be additive alternates in the Phase 1 project.

## **EXHIBIT C**

**CONVENTION CENTER FACILITIES DISTRICT NO. 2008-1**

**CITY OF SAN JOSE**

**COUNTY OF SANTA CLARA, STATE OF CALIFORNIA**

### **REPRESENTATIVE LISTING OF INCIDENTAL EXPENSES AND BOND ISSUANCE COSTS**

It is anticipated that the following incidental expenses may be incurred in the proposed legal proceedings for formation of the Convention Center Facilities District, acquisition, expansion, construction, reconstruction, rehabilitation, replacement or upgrade, of the Facilities and related bond financing and will be payable or reimbursed from proceeds of the Bonds or directly from the proceeds of the Special Tax:

- Special tax consultant services
- City, Participating District staff review, oversight and administrative services
- Bond Counsel and Disclosure Counsel services
- Financial advisor services
- Special tax administrator services
- Appraiser/Market absorption consultant services
- Initial bond transfer agent, fiscal agent, registrar and paying agent services, and rebate calculation service set up charge
- Bond printing and Preliminary Official Statement and Official Statement printing and mailing
- Publishing, mailing and posting of notices
- Recording fees
- Underwriter's discount
- Bond reserve fund
- Capitalized interest
- Governmental notification and filing fees
- Credit enhancement costs
- Rating agency fees
- Continuing disclosure services

The expenses of certain recurring services pertaining to the Convention Center Facilities District may be included in the special tax levy. The foregoing enumeration shall not be regarded as exclusive and shall be deemed to include any other incidental expenses of a like nature which may be incurred from time to time with respect to the Convention Center Facilities District.

**EXHIBIT D**

**CONVENTION CENTER FACILITIES DISTRICT NO. 2008-1  
CITY OF SAN JOSE,  
COUNTY OF SANTA CLARA, STATE OF CALIFORNIA**

**RATE AND METHOD OF APPORTIONMENT  
AND MANNER OF COLLECTION OF THE SPECIAL TAX**

# **RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX**

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## **CITY OF SAN JOSE CONVENTION CENTER FACILITIES DISTRICT NO. 2008-1**

The Special Tax authorized by Convention Center Facilities District No. 2008-1 ("CCFD No. 2008-1") of the City of San Jose (the "City") shall be levied on all Assessor's Parcels within CCFD No. 2008-1 and collected as provided herein commencing in Fiscal Year 2009-2010 in an amount determined by the City Council through the application of the rate and method of apportionment of the Special Tax set forth below. All of the real property within CCFD No. 2008-1, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent and in the manner herein provided.

### **A. DEFINITIONS**

The terms hereinafter set forth have the following meanings:

**"Additional Special Tax"** means the Special Tax determined in accordance with Section D herein, which may be levied by the City Council in any Fiscal Year on an Assessor's Parcel of Taxable Property to satisfy the Revenue Stabilization Reserve Requirement, provided that there are Bonds outstanding.

**"Assessor's Parcel"** means a lot or parcel shown in an Assessor's Parcel Map with an assigned assessor's parcel number.

**"Assessor's Parcel Map"** means an official map of the Assessor of the County designating parcels by assessor's parcel number.

**"Base Special Tax"** means the Special Tax determined in accordance with Section C herein, which may be levied by the City Council in any Fiscal Year on an Assessor's Parcel of Taxable Property.

**"Bond Documents"** means any bond indenture, trust agreement or similar document setting forth the terms of any Bonds.

**"Bonds"** means any binding obligation to pay or repay a sum of money, including obligations in the form of bonds, notes, certificates of participation, long-term leases, loans from government agencies, or loans from banks, other financial institutions, private businesses, or individuals, or long-term contracts, or any refunding thereof, to which the Special Tax has been pledged.

**"CCFD Administrator"** means an official of the City, or designee thereof, responsible for determining the Special Tax Requirement and providing for the levy and collection of the Special Taxes for CCFD No. 2008-1.

**"Chapter"** means Chapter 14.32 of the San Jose Municipal Code, as amended.

**"City"** means the City of San Jose.

**"City Council"** means the City Council of the City.

**"County"** means the County of Santa Clara.

**"Director of Finance"** means the finance director of the City.

**"Exempt Property"** means all Assessor's Parcels within CCFD No. 2008-1 which are exempt from the Special Taxes pursuant to Section F herein.

**"Facilities"** has the meaning given to that term in the resolution of which this Rate and Method of Apportionment of Special Tax is a part.

**"Fiscal Year"** means the period commencing on July 1 of any year and ending the following June 30.

**"Hotel Property"** means an Assessor's Parcel of Taxable Property which consists of one or more buildings or structures situated in the City that has, on file with the Director of Finance, a transient occupancy registration certificate, including, but not limited to, any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, guesthouse, bed and breakfast inn, apartment house, dormitory, public or private club, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof situated in the city, which is occupied or intended or designed for Occupancy by Transients for dwelling, lodging or sleeping purposes.

**"Hotel Transient Unit"** means a room within Hotel Property as to which the Special Tax may be levied in that it is used for Transient Occupancy.

**"Occupancy"** means the use or possession, or right to the use or possession of any Hotel Transient Unit, or portion thereof.

**"Operator"** means the person who is proprietor of the Hotel Property, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator, and shall have the same duties and liabilities as his principal.

**"Owner"** means the landowner, owner of land, or property owner of Hotel Property, except that if the fee owner of the Hotel Property is a government entity, 'Owner' means the lessee of the government entity.

**"Rent"** means the consideration charged for the Occupancy of Hotel Transient Units valued in money, whether to be received in money, goods, property, labor, service, or otherwise. For purposes of this definition, Rent charged to: 1) a federal or state employee when on official business, or 2) any officer or employee of a foreign government, who is exempt by reason of express provision of federal law or international treaty, shall be excluded from the Base Special Tax and Additional Special Tax calculations defined in Section C and D herein, respectively.

**"Revenue Stabilization Reserve"** means a fund to be established and held by the City. Prior to the issuance of Bonds, all Special Tax revenues will, as collected and received by the City, be deposited in the Revenue Stabilization Reserve. Prior to the first issuance of Bonds, the City may pay its authorized expenses incurred in connection with the Convention Center Facilities District from the Revenue Stabilization Reserve, and thereafter as may be specified in the Bond Documents. Funds in the Revenue Stabilization Reserve shall be available for transfer to the appropriate redemption funds or accounts, established by the Bond Documents for the payment of debt service on Bonds, in the event that Special Tax collections, at any time, are not sufficient to make scheduled payments of principal or interest on the Bonds.

Subject to any limitations that may be imposed by the Bond Documents, the City may, at any time, transfer amounts in the Revenue Stabilization Reserve in excess of the Revenue Stabilization Reserve Requirement to the project fund for the Facilities or provide for changes, including a reduction, of the Revenue Stabilization Reserve.

The Bond Documents may establish terms and conditions under which the Revenue Stabilization Reserve may be closed and the Special Tax revenues therein, and any investment earnings thereon, applied to other authorized purposes of CCFD No. 2008-1. In the absence of provisions in the Bond Documents, once all Bonds have been retired, or provision has been made for their retirement or early redemption (which provision may include the application of moneys in the Revenue Stabilization Reserve), the Revenue Stabilization Reserve will be closed and all remaining funds in the Revenue Stabilization Reserve transferred to the project fund for the Facilities.

**"Revenue Stabilization Reserve Requirement"** means the minimum balance required in the Revenue Stabilization Reserve, as specified in the Bond Documents.

**"Special Tax"** means the special tax authorized by CCFD No. 2008-1 to be levied by the City Council pursuant to the Chapter to fund the Facilities.

**"Taxable Property"** means all Assessor's Parcels that are not exempt from the Special Tax pursuant to law or the Rate and Method of Apportionment of Special Tax.

**"Transient"** means a person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty consecutive calendar days or less, counting portions of calendar days as full days.

**"Zone"** means one of the two mutually exclusive geographic areas defined below:

- **"Zone 1"** means all territory in the City located within a two and one quarter (2 ¼) mile radius of the San Jose Convention Center located at 408 Almaden Blvd. San Jose CA. 95110.
- **"Zone 2"** means all territory within the City of San Jose that is not within Zone 1.

## ***B. CLASSIFICATIONS OF ASSESSOR'S PARCELS***

Each Fiscal Year using the definitions above, all Assessor's Parcels within CCFD No. 2008-1 shall be classified as either Hotel Property or Exempt Property and all Hotel Property shall be classified as within either Zone 1 or Zone 2. Commencing with Fiscal Year 2009-2010 and for each subsequent Fiscal Year, all Hotel Property shall be subject to Special Taxes pursuant to Sections C, D and E below.

## ***C. BASE SPECIAL TAX RATE***

### ***Zone 1***

Commencing in Fiscal Year 2009-2010, each Assessor's Parcel classified as Hotel Property within Zone 1 of CCFD No. 2008-1 shall be subject to a Base Special Tax. The Base Special Tax for each Assessor's Parcel classified as Hotel Property within Zone 1 shall equal four percent (4%) of all Rent charged.

### ***Zone 2***

Commencing in Fiscal Year 2009-2010, each Assessor's Parcel classified as Hotel Property within Zone 2 of CCFD No. 2008-1 shall be subject to a Base Special Tax. The Base Special Tax for each Assessor's Parcel classified as Hotel Property within Zone 2 shall equal the percentage of all Rent charged as identified in Table 1 below.

**TABLE 1**  
**ZONE 2 BASE SPECIAL TAX RATES**

Term	Base Special Tax
July 1, 2009 – December 31, 2009	1%
January 1, 2010 – June 30, 2010	2%
Fiscal Year 2010-2011	3%
Fiscal Year 2011-2012 and thereafter	4%

## ***D. ADDITIONAL SPECIAL TAX RATE***

Commencing in Fiscal Year 2009-2010, each Assessor's Parcel classified as Hotel Property in CCFD No. 2008-1 shall be subject to an Additional Special Tax. The Additional Special Tax for each Assessor's Parcel classified as Hotel Property within either Zone shall equal one percent (1%) of all Rent charged.



If Bonds are outstanding, and the City Council determines, by no later than June 1 of any calendar year (or such other date as specified in the Bond Documents), that the amount in the Revenue Stabilization Reserve is less than the Revenue Stabilization Reserve Requirement, then the City Council may levy and collect the Additional Special Tax in the following Fiscal Year. The City must mail written notice of the imposition of the Additional Special Tax to all Owners, or Operators on behalf of Owners, at least 30 days before the imposition of the Additional Special Tax may commence. If the Additional Special Tax will not be imposed in any year immediately following a year in which it was imposed, then the City must mail written notice by June 1 to all Owners or Operators on behalf of Owners that levy of the Additional Special Tax will cease as of the following July 1 for the Fiscal Year beginning on that day.

### ***E. METHOD OF APPORTIONMENT OF THE SPECIAL TAX***

Commencing with Fiscal Year 2009-2010, and for each subsequent Fiscal Year, the City Council shall levy Special Taxes as described below:

- Step One: The Base Special Tax shall be levied on each Assessor's Parcel classified as Hotel Property up to the rates specified in Section C.
- Step Two: The Additional Special Tax shall also be levied on each Assessor's Parcel classified as Hotel Property if authorized, and as provided in, Section D.

Special Taxes associated with Rent that is charged for Transient Occupancy shall be considered levied and due in the calendar month the Transient ceases Occupancy of the Hotel Transient Unit(s), except that Special Taxes associated with Rent that is paid by credit card shall be deemed levied and collected on the date that the credit card is presented for payment to the Operator. The Special Taxes are payable as described in Section G below.

### ***F. EXEMPTIONS***

No Special Tax shall be levied on any Assessor's Parcel not classified as Hotel Property.

### ***G. MANNER OF COLLECTION***

The Special Tax shall be collected monthly by the City. Each Operator on behalf of the Owner shall, on or before the last day of each calendar month, submit the Special Taxes levied against their Hotel Property to the Director of Finance of the City and shall include a special tax obligation form provided by the City.

### ***H. FAILURE TO SUBMIT SPECIAL TAX***

If any Owner, or Operator on behalf of Owner, fails or refuses to pay the Special Tax levied, the Director of Finance shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the Special Tax. As soon as the Director of Finance shall procure such facts and information as he is able to obtain upon which to base the Special Tax for such Assessor's Parcel classified as Hotel Property, the Director of Finance shall proceed to determine the amount of such Special Tax due plus any penalties and interest, as described below. In case such determination is made, the Director of Finance shall give a Determination of Special Tax Due by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the Owner or Operator on behalf of the Owner at its last known place of address. Such Owner, or Operator on behalf of the Owner, may file an appeal as prescribed in Section J herein.

Any Operator who fails to remit the Special Tax levied within the time required shall be subject to a penalty of ten percent (10%) of the amount delinquent in addition to the delinquent Special Tax. Delinquent Special Taxes will incur an additional 1½% penalty (applied to the amount originally levied without compounding) on the first day of each month which is more than six months after the date when the delinquent Special Tax was levied.

### ***I. SPECIAL TAX AUDIT***

It shall be the duty of the Owner, or Operator on behalf of the Owner, for each Assessor's Parcel classified as Hotel Property that is subject to the Special Tax to keep and preserve, for a period of three years, all records as may be deemed necessary by the City (and that will, at a minimum, include a record of all Rents collected) to determine the Special Taxes levied upon such Hotel Property by the City Council. The City shall have the right to inspect such records at all reasonable times.

### ***J. APPEALS***

Any Owner or Operator on behalf of the Owner, claiming that the amount or application of the Special Tax is not correct, may appeal to the City Council by filing a notice of appeal with the City Clerk within fifteen calendar days of the serving or mailing of the Determination of Special Tax Due. The City Council shall fix a time and place for hearing such appeal, and the City Clerk shall give notice in writing to such Owner and Operator at their last known place of address. The findings of the City Council shall be final and conclusive; and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any Special Tax found to be due shall be immediately due and payable upon the service of the City Council findings. If the City Council decision requires that the Special Tax for an Assessor's Parcel be modified or changed in favor of the Owner, or Operator on behalf of Owner, a cash refund shall not be made, but a credit shall be given against future Special Taxes on that Assessor's Parcel.

### ***K. TERM OF SPECIAL TAX***

The authority of the City Council to levy the Base Special Tax on all Assessor's Parcels classified as Hotel Property within CCFD No. 2008-1 in accordance with Section E is perpetual. The Additional Special Tax may only be levied during a period when Bonds are outstanding in accordance with Section E herein.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE  
DECLARING THE NEED TO INCUR BONDED INDEBTEDNESS TO  
FINANCE SPECIFIED ACQUISITION, CONSTRUCTION,  
RECONSTRUCTION, REPLACEMENT, REHABILITATION AND  
UPGRADES OF THE SAN JOSE CONVENTION CENTER BY AUTHORITY  
OF CONVENTION CENTER FACILITIES DISTRICT NO. 2008-1, CITY OF  
SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA**

WHEREAS, the City Council of the City of San José (the "City") has duly adopted its Resolution No. \_\_\_\_\_ (the "Resolution of Intention") this date, to which reference is made for further particulars, declaring its intention to establish a convention center facilities district under and pursuant to Chapter 14.32 of the San José City Municipal Code (the "Chapter"), to be known and designated as "Convention Center Facilities District No. 2008-1, City of San José, County of Santa Clara, State of California" (the "Convention Center Facilities District"), and to levy a special tax therein to finance the acquisition, construction, reconstruction, replacement, rehabilitation and upgrade of the San José Convention Center; and

WHEREAS, the City Council of the City (the "City Council") is fully advised in this matter;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE THAT:

1. The City Council hereby specifically finds and declares that the actions authorized hereby constitute and are with respect to public affairs of the City and that the statements, findings and determinations of the City set forth above are true and correct and that the consideration of the issuance of bonds to be authorized by the Convention Center Facilities District is important to the public welfare of the residents of the City, and may result in significant public benefits.

2. The City Council hereby declares that the public convenience and necessity require that a bonded indebtedness be incurred to finance the payment of the acquisition and construction of the Facilities (as that term is defined in the Resolution of Intention). The cost of financing the acquisition and construction of the Facilities includes incidental expenses for the Facilities comprising the costs of planning and designing the Facilities, together with the costs of environmental evaluations thereof, and all costs associated with the creation of the Convention Center Facilities District, the issuance of bonds, the determination of the amount of any special taxes or the collection or payment of any special taxes, and costs otherwise incurred in order to carry out the authorized purposes of the Convention Center Facilities District, together with any other expenses incidental to the acquisition and construction of the Facilities.

3. The cumulative amount of any proposed bonded indebtedness to be incurred to finance the acquisition and construction of the Facilities shall not exceed

\$750,000,000, which amount includes all costs and estimated costs incidental to, or connected with, the accomplishment of the purpose for which the bonded indebtedness is proposed to be incurred, including but not limited to the estimated costs of acquisition of interests in real property; capacity or connection fees; satisfaction of contractual obligations relating to expenses or the advancement of funds for expenses existing at the time the bonds are issued pursuant to the Chapter; architectural, engineering, inspection, legal, fiscal, and financial consultant fees; bond and other reserve funds; discount fees; interest on any bonds authorized by the Convention Center Facilities District estimated to be due and payable within two years of issuance of the bonds; election costs; and all costs of issuance of the bonds, including but not limited to fees for bond counsel, costs of obtaining credit ratings, bond insurance premiums, fees for letters of credit and other credit-enhancement costs, and printing costs.

4. The term of any series of bonds shall not exceed 40 years.

5. Notice is given that Tuesday, March 10, 2009, at 1:30 p.m., or as soon thereafter as the City Council may reach the matter, in the City Council Chambers at San José City Hall at 200 East Santa Clara Street, City Council Wing, 2nd Floor, San José, California, 95113, has been fixed by the City Council as the time and place for a public hearing to be held by the City Council to consider the incurring of the bonded indebtedness to finance the acquisition and construction of the Facilities. At the public hearing, any persons interested, including all taxpayers, property owners, and registered voters within the Convention Center Facilities District, may appear and be heard on the proposed debt issuance or on any other matters set forth herein, and they may present any matters relating to the necessity for incurring the bonded indebtedness.

6. Notice of the time and place of such public hearing shall be given by the City Clerk in the following manner:

(a) A Notice of Public Hearing in the form required by the Chapter is to be published once in the *SAN JOSE MERCURY NEWS*, a newspaper of general circulation circulated within the area of the Convention Center Facilities District. The publication is to be made pursuant to section 6061 of the California Government Code and must be completed at least seven days prior to the date set for such public hearing.

(b) A Notice of Public Hearing in the form required by the Chapter is to be mailed, first-class postage prepaid, to each owner of land within the Convention Center Facilities District, except in cases where the land is owned by a public agency in which case the mailing shall be to the lessee of the public agency, at their addresses as shown on the last equalized assessment roll or as otherwise known to the City Clerk.

7. It is the intention of the City Council that any bonds issued be callable (may be redeemed prior to their maturity dates) in accordance with the Chapter.

8. This Resolution shall take effect upon its adoption.

ADOPTED this 3rd day of February, 2009, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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CHUCK REED, Mayor

ATTEST:

---

LEE PRICE, City Clerk

# RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

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## CITY OF SAN JOSE

### CONVENTION CENTER FACILITIES DISTRICT NO. 2008-1

The Special Tax authorized by Convention Center Facilities District No. 2008-1 ("CCFD No. 2008-1") of the City of San Jose (the "City") shall be levied on all Assessor's Parcels within CCFD No. 2008-1 and collected as provided herein commencing in Fiscal Year 2009-2010 in an amount determined by the City Council through the application of the rate and method of apportionment of the Special Tax set forth below. All of the real property within CCFD No. 2008-1, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent and in the manner herein provided.

#### **A. DEFINITIONS**

The terms hereinafter set forth have the following meanings:

**"Additional Special Tax"** means the Special Tax determined in accordance with Section D herein, which may be levied by the City Council in any Fiscal Year on an Assessor's Parcel of Taxable Property to satisfy the Revenue Stabilization Reserve Requirement, provided that there are Bonds outstanding.

**"Assessor's Parcel"** means a lot or parcel shown in an Assessor's Parcel Map with an assigned assessor's parcel number.

**"Assessor's Parcel Map"** means an official map of the Assessor of the County designating parcels by assessor's parcel number.

**"Base Special Tax"** means the Special Tax determined in accordance with Section C herein, which may be levied by the City Council in any Fiscal Year on an Assessor's Parcel of Taxable Property.

**"Bond Documents"** means any bond indenture, trust agreement or similar document setting forth the terms of any Bonds.

**"Bonds"** means any binding obligation to pay or repay a sum of money, including obligations in the form of bonds, notes, certificates of participation, long-term leases, loans from government agencies, or loans from banks, other financial institutions, private businesses, or individuals, or long-term contracts, or any refunding thereof, to which the Special Tax has been pledged.

**"CCFD Administrator"** means an official of the City, or designee thereof, responsible for determining the Special Tax Requirement and providing for the levy and collection of the Special Taxes for CCFD No. 2008-1.

**"Chapter"** means Chapter 14.32 of the San Jose Municipal Code, as amended.

**"City"** means the City of San Jose.

**"City Council"** means the City Council of the City.

**"County"** means the County of Santa Clara.

**"Director of Finance"** means the finance director of the City.

**"Exempt Property"** means all Assessor's Parcels within CCFD No. 2008-1 which are exempt from the Special Taxes pursuant to Section F herein.

**"Facilities"** has the meaning given to that term in the resolution of which this Rate and Method of Apportionment of Special Tax is a part.

**"Fiscal Year"** means the period commencing on July 1 of any year and ending the following June 30.

**"Hotel Property"** means an Assessor's Parcel of Taxable Property which consists of one or more buildings or structures situated in the City that has, on file with the Director of Finance, a transient occupancy registration certificate, including, but not limited to, any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, guesthouse, bed and breakfast inn, apartment house, dormitory, public or private club, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof situated in the city, which is occupied or intended or designed for Occupancy by Transients for dwelling, lodging or sleeping purposes.

**"Hotel Transient Unit"** means a room within Hotel Property as to which the Special Tax may be levied in that it is used for Transient Occupancy.

**"Occupancy"** means the use or possession, or right to the use or possession of any Hotel Transient Unit, or portion thereof.

**"Operator"** means the person who is proprietor of the Hotel Property, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator, and shall have the same duties and liabilities as his principal.

**"Owner"** means the landowner, owner of land, or property owner of Hotel Property, except that if the fee owner of the Hotel Property is a government entity, 'Owner' means the lessee of the government entity.

**"Rent"** means the consideration charged for the Occupancy of Hotel Transient Units valued in money, whether to be received in money, goods, property, labor, service, or otherwise. For purposes of this definition, Rent charged to: 1) a federal or state employee when on official business, or 2) any officer or employee of a foreign government, who is exempt by reason of express provision of federal law or international treaty, shall be excluded from the Base Special Tax and Additional Special Tax calculations defined in Section C and D herein, respectively.

**“Revenue Stabilization Reserve”** means a fund to be established and held by the City. Prior to the issuance of Bonds, all Special Tax revenues will, as collected and received by the City, be deposited in the Revenue Stabilization Reserve. Prior to the first issuance of Bonds, the City may pay its authorized expenses incurred in connection with the Convention Center Facilities District from the Revenue Stabilization Reserve, and thereafter as may be specified in the Bond Documents. Funds in the Revenue Stabilization Reserve shall be available for transfer to the appropriate redemption funds or accounts, established by the Bond Documents for the payment of debt service on Bonds, in the event that Special Tax collections, at any time, are not sufficient to make scheduled payments of principal or interest on the Bonds.

Subject to any limitations that may be imposed by the Bond Documents, the City may, at any time, transfer amounts in the Revenue Stabilization Reserve in excess of the Revenue Stabilization Reserve Requirement to the project fund for the Facilities or provide for changes, including a reduction, of the Revenue Stabilization Reserve.

The Bond Documents may establish terms and conditions under which the Revenue Stabilization Reserve may be closed and the Special Tax revenues therein, and any investment earnings thereon, applied to other authorized purposes of CCFD No. 2008-1. In the absence of provisions in the Bond Documents, once all Bonds have been retired, or provision has been made for their retirement or early redemption (which provision may include the application of moneys in the Revenue Stabilization Reserve), the Revenue Stabilization Reserve will be closed and all remaining funds in the Revenue Stabilization Reserve transferred to the project fund for the Facilities.

**“Revenue Stabilization Reserve Requirement”** means the minimum balance required in the Revenue Stabilization Reserve, as specified in the Bond Documents.

**“Special Tax”** means the special tax authorized by CCFD No. 2008-1 to be levied by the City Council pursuant to the Chapter to fund the Facilities.

**“Taxable Property”** means all Assessor’s Parcels that are not exempt from the Special Tax pursuant to law or the Rate and Method of Apportionment of Special Tax.

**“Transient”** means a person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty consecutive calendar days or less, counting portions of calendar days as full days.

**“Zone”** means one of the two mutually exclusive geographic areas defined below.

- **“Zone 1”** means all territory in the City located within a two and one quarter (2 ¼) mile radius of the San Jose Convention Center located at 408 Almaden Blvd. San Jose CA. 95110.
- **“Zone 2”** means all territory within the City of San Jose that is not within Zone 1.



## ***B. CLASSIFICATIONS OF ASSESSOR'S PARCELS***

Each Fiscal Year using the definitions above, all Assessor's Parcels within CCFD No. 2008-1 shall be classified as either Hotel Property or Exempt Property and all Hotel Property shall be classified as within either Zone 1 or Zone 2. Commencing with Fiscal Year 2009-2010 and for each subsequent Fiscal Year, all Hotel Property shall be subject to Special Taxes pursuant to Sections C, D and E below.

## ***C. BASE SPECIAL TAX RATE***

### ***Zone 1***

Commencing in Fiscal Year 2009-2010, each Assessor's Parcel classified as Hotel Property within Zone 1 of CCFD No. 2008-1 shall be subject to a Base Special Tax. The Base Special Tax for each Assessor's Parcel classified as Hotel Property within Zone 1 shall equal four percent (4%) of all Rent charged.

### ***Zone 2***

Commencing in Fiscal Year 2009-2010, each Assessor's Parcel classified as Hotel Property within Zone 2 of CCFD No. 2008-1 shall be subject to a Base Special Tax. The Base Special Tax for each Assessor's Parcel classified as Hotel Property within Zone 2 shall equal the percentage of all Rent charged as identified in Table 1 below.

**TABLE 1**  
**ZONE 2 BASE SPECIAL TAX RATES**

Term	Base Special Tax
July 1, 2009 – December 31, 2009	1%
January 1, 2010 – June 30, 2010	2%
Fiscal Year 2010-2011	3%
Fiscal Year 2011-2012 and thereafter	4%

## ***D. ADDITIONAL SPECIAL TAX RATE***

Commencing in Fiscal Year 2009-2010, each Assessor's Parcel classified as Hotel Property in CCFD No. 2008-1 shall be subject to an Additional Special Tax. The Additional Special Tax for each Assessor's Parcel classified as Hotel Property within either Zone shall equal one percent (1%) of all Rent charged.

If Bonds are outstanding, and the City Council determines, by no later than June 1 of any calendar year (or such other date as specified in the Bond Documents), that the amount in the Revenue Stabilization Reserve is less than the Revenue Stabilization Reserve Requirement, then the City Council may levy and collect the Additional Special Tax in the following Fiscal Year. The City must mail written notice of the imposition of the Additional Special Tax to all Owners, or Operators on behalf of Owners, at least 30 days before the imposition of the Additional Special Tax may commence. If the Additional Special Tax will not be imposed in any year immediately following a year in which it was imposed, then the City must mail written notice by June 1 to all Owners or Operators on behalf of Owners that levy of the Additional Special Tax will cease as of the following July 1 for the Fiscal Year beginning on that day.

### ***E. METHOD OF APPORTIONMENT OF THE SPECIAL TAX***

Commencing with Fiscal Year 2009-2010, and for each subsequent Fiscal Year, the City Council shall levy Special Taxes as described below:

- Step One: The Base Special Tax shall be levied on each Assessor's Parcel classified as Hotel Property up to the rates specified in Section C.
- Step Two: The Additional Special Tax shall also be levied on each Assessor's Parcel classified as Hotel Property if authorized, and as provided in, Section D.

Special Taxes associated with Rent that is charged for Transient Occupancy shall be considered levied and due in the calendar month the Transient ceases Occupancy of the Hotel Transient Unit(s), except that Special Taxes associated with Rent that is paid by credit card shall be deemed levied and collected on the date that the credit card is presented for payment to the Operator. The Special Taxes are payable as described in Section G below.

### ***F. EXEMPTIONS***

No Special Tax shall be levied on any Assessor's Parcel not classified as Hotel Property.

### ***G. MANNER OF COLLECTION***

The Special Tax shall be collected monthly by the City. Each Operator on behalf of the Owner shall, on or before the last day of each calendar month, submit the Special Taxes levied against their Hotel Property to the Director of Finance of the City and shall include a special tax obligation form provided by the City.

### ***H. FAILURE TO SUBMIT SPECIAL TAX***

If any Owner, or Operator on behalf of Owner, fails or refuses to pay the Special Tax levied, the Director of Finance shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the Special Tax. As soon as the Director of Finance shall procure such facts and information as he is able to obtain upon which to base the Special Tax for such Assessor's Parcel classified as Hotel Property, the Director of Finance shall proceed to determine the amount of such Special Tax due plus any penalties and interest, as described below. In case such determination is made, the Director of Finance shall give a Determination of Special Tax Due by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the Owner or Operator on behalf of the Owner at its last known place of address. Such Owner, or Operator on behalf of the Owner, may file an appeal as prescribed in Section J herein.

Any Operator who fails to remit the Special Tax levied within the time required shall be subject to a penalty of ten percent (10%) of the amount delinquent in addition to the delinquent Special Tax. Delinquent Special Taxes will incur an additional 1½% penalty (applied to the amount originally levied without compounding) on the first day of each month which is more than six months after the date when the delinquent Special Tax was levied.

### ***I. SPECIAL TAX AUDIT***

It shall be the duty of the Owner, or Operator on behalf of the Owner, for each Assessor's Parcel classified as Hotel Property that is subject to the Special Tax to keep and preserve, for a period of three years, all records as may be deemed necessary by the City (and that will, at a minimum, include a record of all Rents collected) to determine the Special Taxes levied upon such Hotel Property by the City Council. The City shall have the right to inspect such records at all reasonable times.

### ***J. APPEALS***

Any Owner or Operator on behalf of the Owner, claiming that the amount or application of the Special Tax is not correct, may appeal to the City Council by filing a notice of appeal with the City Clerk within fifteen calendar days of the serving or mailing of the Determination of Special Tax Due. The City Council shall fix a time and place for hearing such appeal, and the City Clerk shall give notice in writing to such Owner and Operator at their last known place of address. The findings of the City Council shall be final and conclusive, and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any Special Tax found to be due shall be immediately due and payable upon the service of the City Council findings. If the City Council decision requires that the Special Tax for an Assessor's Parcel be modified or changed in favor of the Owner, or Operator on behalf of Owner, a cash refund shall not be made, but a credit shall be given against future Special Taxes on that Assessor's Parcel.

### ***K. TERM OF SPECIAL TAX***

The authority of the City Council to levy the Base Special Tax on all Assessor's Parcels classified as Hotel Property within CCFD No. 2008-1 in accordance with Section E is perpetual. The Additional Special Tax may only be levied during a period when Bonds are outstanding in accordance with Section E herein.